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Office-Supreme Court, U.S.
FILED
JUL 12 1985
ALEXANDER L. STEVAS,
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NO.

in the Supreme Court of the United States

October Term, 1985

RAMON MILIAN-RODRIGUEZ,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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QUESTIONS PRESENTED

I.

Did the Court of Appeals improperly expand the United States Supreme Courts definition of exigent circumstances which justify a warrantless arrest in a Defendant's home and thus violate the Defendant's rights pursuant to the Fourth Amendment to the United States Constitution?

II.

Did the Court of Appeals improperly ignore the rulings of the United States Supreme Court when it ruled that there was attenuation of illegality when a second statement was made one hour after an illegally obtained first statement and thus violate the Defendant's rights the Fourth, Fifth, and Sixth Amendments to the United States Constitution?

III.

Did the Court of Appeals improperly ignore the right of a Defendant to terminate a voluntary consent to search his office without warrant and thus violate his rights pursuant to the Fourth Amendment to the United States Constitution?

TABLE OF CONTENTS

	Page
Questions Presented for Review	i
Table of Contents	ii
Table of Authorities	iii
Opinion Below	2
Statement of the Case	18
Reasons for Granting the Petition	22
Conclusion	32

TABLE OF AUTHORITIES

Cases	Pages
Brown v. Illinois, 422 U.S. 590, 95 S.Ct. 2254, 45 L.Ed 2d 416 (1975)	27, 28
Dunaway v. New York, 442 U.S. 200 99 S.Ct. 2248, 60 L.Ed. 2d 824 (1979)	27, 28
Honig v. United States, 208 F.2d 916 (8th Cir. 916) (8th Cir. 1953)	29
Mason v. Pulliam, 557 F.2d 426 (5th Cir. 1977)	29
Payton v. New York, 445 U.S. 573 100 S.Ct. 1371 (1980)	22
Shneckcloth v. Bustamante, 412 U.S. 218 (1973)	29
Taylor v. Alabama, 457 U.S. 687 102 S.Ct. 2664 (1982)	27, 28
United States v. Burgos, 720 F.2d 1520	23, 24
United States v. Dhiarinte, 445 F.2d 126 (7th Cir. 1971)	29

TABLE OF AUTHORITIES

Cases	Pages
United States v. Mesa, 660 F.2d 1070 (5th Cir. Unit B 1981)	24
United States v. Ratkley, 724 F.2d 1463 (11th Cir. 1984)	29, 31
United States v. Rubin, 474 F.2d 262 (3rd Cir. 1973), cert. denied, 414 U.S. 833, 94 S.Ct. 183 38 L.Ed.2d 68 (1973)	24
Welsh v. Wisconsin, 104 S.Ct. 2091 (1984)	22, 25

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Petitioner, RAMON MILIAN-RODRIGUEZ, prays that writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eleventh Circuit entered May 13, 1985, reversing the suppression of certain evidence against him in a pending action in the United States District for the Southern District of Florida.

OPINION BELOW

As a convenience to the flow of the material, the opinion of the Court of Appeals has been included in the text rather than appendix. This opinion encompasses 16 pages of the petition.

UNITED STATES of America,
Plaintiff-Appellant,

v.

Ramon MILIAN-RODRIGUEZ
Defendant-Appellee,

No. 84-5174.

United States Court of Appeals,
Eleventh Circuit.

May 13, 1985.

Reversed and remanded.

Appeal from the United States District Court for the Southern District of Florida.

Before FAY and JOHNSON, Circuit Judges, and DYER, Senior Circuit Judge.

JOHNSON, Circuit Judge:

In this case, the government appeals from the suppression of evidence, including drugs and firearms, which was to be used in the prosecution of Ramon

Milian-Rodriguez for drug and currency violations. Because we conclude that the relevant searches were conducted pursuant to probable cause, exigent circumstances, or the broad-ranging consent of a suspect who hoped to strike a deal with the government, we reverse.

I. THE FACTS

Beginning in November 1982, agents in Operation Greenback, a Miami-based federal task force investigating currency violations, received information from law enforcement authorities that Ramon Milian-Rodriguez (hereinafter "Milian") was travelling periodically to Panama with extremely large sums of United States currency. A record check revealed that neither Currency Transaction Reports nor Currency and Monetary Instrument Reports had been filed as required, either by Milian or Cambios Monetarious Internacional, the Panamanian currency exchange with which he was associated. Accordingly, Milian was placed under scrutiny.

On two occasions in April 1983, law enforcement agents observed the loading of suspicious cargo aboard Milian's Lear Jet, which was bound for Panama. Agents of the Drug Enforcement Administration ("DEA") subsequently confirmed that the cargo contained United States currency, as to which none of the required reports had been filed. In May 4, 1983, law enforcement agents, having been informed that Milian would be making another trip to Panama, saw his jet being loaded in the same manner they had observed the previous month. Once again, no currency reports had been filed. On this occasion, the jet was stopped, passengers and crew were removed and the cabin was searched. The search

revealed $5,447,949 in United States currency stowed within the cabin. Milian's attache case, also on the plane, contained detailed records relating to his money-smuggling activities and documenting the transportation to Panama of approximately $146 million between August 19[illegible]2 and April 1983. These items were subsequently taken to the downtown Miami office of Operation Greenback.

While this search was underway, Milian was taken to an office located in the airport complex. He was told that he would be detained during the search, but that he was not under arrest. During this time Milian stated to a law enforcement officer that he wished to speak with the agent in charge. Arrangements were made for the ranking officers of the Customs Service on the scene to speak with Milian in a room at the airport leased by Milian's company, Consolidated Courier Service. Before entering this room, Milian executed a form giving the agents general authorization to search those premises.

When the Customs officers arrived, Milian informed them that "they didn't know what they had here." He boasted that he was the most sophisticated suspect with whom they had ever come in contact, and that he could provide them with a rare "opportunity" to survey the workings of an international narcotics and currency-laundering network. Anticipating an inculpatory statement, the Customs officers summoned the Assistant United States Attorney assigned to Operation Greenback and read Milian his rights. Milian stated that he had foreseen his eventual apprehension and had determined that when the day came he would offer his full cooperation. He stated to the assembled officials that he would provide information on the full range of criminal activities

in which he had been involved if the government would not file criminal charges and would protect his anonymity as an informant. The agents explained to Milian that they lacked the authority to enter into any agreement, but that the government would consider his offer if the information he could provide was of "great interest." The law enforcement officials informed Milian that he was free to go, but he expressed his eagerness to accompany them to the office of Operation Greenback.

After arriving at Operation Greenback, Milian executed a written consent authorizing the search of his business premises at 2852 Shipping Avenue. This form stated, *inter alia*, "These (officers or agents) are authorized by me to take from my premises any letters, papers, materials or other property which they desire." There was no discussion of any spatial limitations on the search. After several hours of discussion concerning the currency-smuggling operations with which Milian was involved, IRS Special Agent Raul de Armas asked to speak with Milian about currency laundering in general and three individuals who were under investigation for participation in laundering activities. Milian indicated that these individuals were drug dealers and clients of his, and he provided some details on the methods he used to launder funds. But he declined to give Armas further details pending a decision on his offer of cooperation.

At approximately 7 p.m., when this discussion had concluded, Milian volunteered to accompany the agents who were to conduct the search of his business premises. Following their arrival, the agents surveyed the premises to determine how long the search would take, and

subsequently began in Milian's office. Milian was in all respects cooperative, retrieving files relating to those individuals about whom he had been questioned by Armas and assisting the officials in locating any documents they wished to see. The agents began to photocopy the files, and when this proved too slow, brought in a high speed copier. At approximately 7:30 p.m., agents in Milian's presence attempted to open the door to a closet adjacent to Milian's desk. The door was locked and Milian volunteered that the key was in his briefcase. (The briefcase had been taken from the plane earlier that day and was at that time at the Operation Greenback office). The agents made no further attempts to open the closet at that time. At approximately 10:00 p.m., Milian decided to depart the premises. He was told that the agents would remain at the office, as there was a great deal more photocopying to be completed. At approximately 11:45 p.m., Milian called to inquire as to the progress of the search. He was told that, as the agents were copying all of the documents in his office, it appeared unlikely that the search would be completed by morning.

At 12:15 a.m., the agents opened the door to the closet in Milian's office by picking the lock. After opening the door Agent Heims observed an unlocked safe, from which he removed United States currency and bonds. He then noticed a duffle bag marked "Uzi," which he removed from the closet and unzipped, revealing an Uzi machine gun. A second duffle bag was removed and found to contain additional firearms. Agent Heims then observed a partially opened duffle bag which appeared to contain a white substance. The bag was removed and subsequent field tests revealed that it contained 62 pounds of cocaine.

After the discovery of these objects in the closet, and consultation with two Assistant United States Attorneys, the agents executed a warrantless arrest of Milian. At approximately 3 a.m., four federal agents and a uniformed local police officer arrived at Milian's home. When they rang the doorbell, Milian appeared, partially clad, behind the burglar bars at the door. The agents instructed him to ask his wife to bring the keys. Milian's wife opened the bars, and the agents immediately entered the house and handcuffed Milian. He expressed his surprise at the arrest, given his belief that they had some sort of agreement, and he asked what had prompted the arrest. When informed of the discovery of the cocaine Milian replied that he had forgotten about it. The officers then asked Milian for permission to search his residence. He stated that there was nothing of interest, but signed a written consent form without objection. The ensuing search revealed additional firearms and almost $40,000 in counterfeit United States currency.

Milian was taken to United States Customs headquarters and advised of his rights, both orally and through an advise of rights form. Milian subsequently informed the agents that the cocaine discovered was the unsold portion of a 500 kilogram sale which had occurred 30 to 45 days previously. He executed another consent to search form for a warehouse in which he held an interest and which he identified as the source of the cocaine seized from his closet. He also identified the source and distributors for a large scale narcotics operation. Milian explicitly rejected an opportunity to call his attorney. Because of the magnitude of the crimes in which he had participated and his failure to

inform agents of his cocaine cache, Milian's offer of cooperation was rejected and his arrest completed.

A. Course of Proceedings

A 62-count indictment was filed in the United States District Court for the Southern District of Florida which charged Milian with, *inter alia*, illicit transportation of drug proceeds, possession of cocaine with intent to distribute, possession of counterfeit currency, racketeering, foreign travel in aid of racketeering, and failure to file appropriate currency reports. Milian moved to suppress virtually all the evidence which had been produced in the course of the investigation. A hearing was held between January 9, and 12, 1984. On February 1 and 2 the district court granted Milian's motion to suppress the evidence seized pursuant to the search of his business premises and his residence, and the statements made at the Customs office, the court denied Milian's motion to suppress the evidence seized from the search of his plane. On February 28, 1984, the United States filed a motion to reopen the record and for reconsideration of the court's suppression rulings. That motion was denied by the district court on March 5, 1984. On March 8, 1984, the government filed a notice of appeal pursuant to 18 U.S.C.A. §3731.

II. THE SUPPRESSION ORDER

A. Search of Office Closet

[1, 2] The Government first challenges the suppression of the items seized from the closet at Milian's

business premises.[1] With respect to these items, the district court stated:

> I find that the defendant voluntarily allowed the brief search in the room above the airport and agreed as part of his negotiations with the agents to allow a search at least of the files and records in his office . . . I would find that the files that were copied over the long period of time—I think perhaps that took all night—that there was a consent given by the defendant to allow that . . . However, it did seem to me that the Government went beyond that when it picked the lock on the door some time late in the evening, that that was beyond the scope of the consensual search. And I think the record reflects clearly that the search that was consented to, the defendant was talking about files and records and not the right to go and pick the lock on his closet. Certainly, the Government could have gotten a search warrant, had lawyers available, tired though they may have been, during that day. I would go ahead, based on that, I would suppress whatever evidence was in the closet.

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[1]Milian argues that the appeal taken by the government was not timely because it was filed within thirty days after the denial of the government's motion to reopen the record and reconsider, but not within thirty days of the original suppression order. *See* 18 U.S.C.A. §3731 (appeal within 30 days of "a decision judgment or order of a district court dismissing an indictment"); Fed.R.App.Proc. 4(b) (appeal within thirty days "after entry of the judgment or order appealed from"). This claim has little merit. The case law clearly establishes that the timely filing of a motion for rehearing can render the dismissal of an indictment non-final, and extend

Milian adds that the agents' consistent focus on the files and ledgers in which his money-laundering operations were recorded demonstrates that the government's interest was limited to the records stored in his office. The government argues that the district court erred in suppressing this evidence because the consent given by appellee extended to his entire business premises, and because appellee manifested his consent to the search of the closet by telling agents the location of the key.[2]

[3, 4] A suspect's consent can impose limits on the scope of a search in the same way as do the specifications of a warrant, *see Mason v. Pulliam*, 557 F.2d 426 (5th Cir. 1977). Moreover, the government may not use consent to a search which was initially

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(Footnote 1 Continued)

the period during which an appeal may be taken, regardless of whether such extension is explicitly sanctioned by any statute or rule. In such cases the period of limitation runs from the date on which the motion for rehearing is denied, not from the date on which the indictment was originally dismissed. *United States v. Healy*, 376 U.S. 75, 84 S.Ct. 553, 11 L.Ed.2d 527 (1964); *United States v. Dieter*, 429 U.S. 6, 97 S.Ct. 18, 50 L.Ed.2d 8 (1976). In *Dieter* the Supreme Court applied the *Healy* rule to a motion to "Set Aside the Order of Dismissal," which, it explained, was not formally the same as a motion for rehearing, but had the same effect. This holding indicates, that the *Healy* rule is applicable to appellant's motion to reopen and reconsider, which serves a similar purpose, and that the appeal was timely filed.

[2]The Government also argues that the search falls within the good-faith exception to the exclusionary rule established in *United States v. Leon*, and that the search is protected by the "inevitable discovery" rule recently announced in *Nix v. Williams*. The first claim is without merit. The good-faith exception exclusionary rule

described as narrow as license to conduct a general search, *See United States v. Dichiarinte*, 445 F.2d 126 (7th Cir.1971). There is no basis, however, for concluding that either of these principles was violated in the instant case. Although the discussion during the afternoon focused on the material that would be provided by records and files, the form signed was general; and there was absolutely no discussion of any limit on the search or on the nature of the items to be inspected. Moreover, the execution of the consent form was part of Milian's on-going effort to cooperate with the police. Because the agents would not make a deal except for material of "great interest," Milian had strong incentive to grant an authorization which was as broad as possible. Finally, even if the search had been limited to records and files, the search of the closet would not necessarily have been invalid. As the closet was immediately adjacent to Milian's desk, it would have been entirely reasonable to believe that there might be files and records stored inside it. *Cf. United States v. White*, 706 F.2d 806, 808 (7th Cir.1983) (applying "objective reasonableness" standard of *Scott v. United States*, 436 U.S. 128, 98 S.Ct. 1717, 56 L.Ed.2d 168) (search of travel bag valid because reasonable to think narcotics might be hidden

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(Footnote 2 Continued)

is not broad enough to cover the circumstances of this search. The rule announced last term in *United States v. Leon*, ____ *U.S.* ____, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984), applies to "officers acting in reasonable reliance on a warrant issued by a detached and neutral magistrate but ultimately found to be invalid." The version of the rule relied upon by the former Fifth Circuit in *United States v. Williams*, 622 F.2d 830 (5th Cir.1980), also applies to the reliance of officers on a statute which is later held unconstitutional or a court precedent which is later overruled. *Id.* at 841. The good faith

there). Thus the district court's finding that consent was limited to files and books was clearly erroneous.

[5] The district court's error in suppressing the evidence is also demonstrated by the exchange which took place between Milian and the agents concerning access to Milian's closet. While Milian was still present in the office, agents attempted to open the closet adjacent to the desk. When they found it was locked, Milian advised them that the key was in his briefcase (which had been taken from Milian's plane to the Operation Greenback office). By describing the location of the keys which would provide entry into the closet, Milian provided additional evidence of his consent to the search. *Cf. United States v. Allison*, 616 F.2d 779, 782 (5th Cir.), *cert. denied*, 449 U.S. 857, 101 S.Ct. 156, 66 L.Ed.2d 72 (1980) (consent indicated by presentation of keys to law

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(Footnote 2 Continued)

exception has not been applied to those circumstances in which there is a question as to the scope of a consensual search.

The government's claim with respect to the "inevitable discovery" rule has greater plausibility. That rule, which was adopted by the Supreme Court in *Nix v. Williams*, ___ U.S. ___, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984), states that, where the evidence would inevitably have been discovered by lawful means, it need not be suppressed, though official misconduct may have occurred in securing it. Because Milian informed officials of the location of the keys which would open the closet, it appears that the lawful discovery of the cocaine and firearms may have been "inevitable"; police simply had to retrieve the keys from the briefcase at Operation Greenback and open the closet. But because, as will be discussed *infra*, Milian's statement concerning the location of the keys manifested his consent to the search of the closet, we need not reach the applicability of the "inevitable discovery" rule.

enforcement officials). Appellant argues that this case is distinguishable from cases such as *Allison* in which the keys are physically presented and more closely analogous to cases in which the defendant gives a qualified or equivocal response and fails to present officials with the keys. *See United States v. Patacchia*, 602 F.2d. 218, 219 (9th Cir.1979) (defendant expresses willingness but inability to open trunk because of damage to rear of car and absence of trunk key); *cf. United States v. Ester*, 442 F.Supp. 736, 738 (S.D.N.Y.1977) (defendant says nothing but permits law enforcement agent to retrieve key from defendant's pocket). This claim, however, has little merit. Milian was unable to present the keys, as the briefcase had been taken to Operation Greenback, but there was nothing equivocal in his response: the agents were fully aware of the location of the briefcase, and Milian knew this when he provided the information. Providing officials with the information necessary to gain access to the closet was, moreover, fully consistent with Milian's comprehensive attempt to cooperatate with law enforcement efforts. Not only the generality of Milian's written consent but his oral response to official efforts to search the closet indicate that the district court's suppression of its contents was clearly erroneous.

B. Arrest and Residential Search

The government also challenges the suppression of the firearms and counterfeit currency found at Milian's home following his arrest. With respect to the items seized following Milian's arrest, the district court stated:

> It seems to me that the easiest question that was presented was the conduct of the

> government at the defendant's house when the search was made early in the morning. I find that there really was no excuse for not getting a warrant to search the house under the circumstances . . . I realize there was a consent given by the defendant after he was awakened at 3:00 o'clock in the morning under what I would consider extreme conditions where people—law enforcement officers were at both sides of the house with weapons drawn. I find that, if the Fourth Amendment means anything at all today, that sort of activity should be prohibited. Therefore, I would suppress everything that was found in the house.

(Hearing Transcript at 6-7). Milian argues that the suppression was appropriate, as his warrantless arrest violated the Fourth Amendment protections recognized in *Payton v. New York*, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980), and rendered the subsequent, ostensibly consensual search of his home invalid. The government claims that suppression was improper under this Circuit's construction of the *Payton* rule.

[6] The Supreme Court has held that the Fourth Amendment prohibits police from making a warrantless and nonconsensual entry into a suspect's home to make a routine felony arrest. *United States v. Payton*, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 939 (1980). *Payton* makes clear, however, that such an entry may be proper where probable cause to arrest the suspect exists and there are exigent circumstances making it impossible or imprudent for a warrant to be obtained. 445 U.S. at 588, 100 S.Ct. at 1381 (approving *Dorman v. United States*, 435 F.2d 385 (D.C.Cir.1970) (en banc)), 590. This

Circuit has recognized circumstances sufficiently exigent to justify warrantless entry where law enforcement officials are in "hot pursuit" of a suspect, *United States v. Burgos*, 720 F.2d 1520 (11th Cir.1983) (citing *United States v. Santana*, 427 U.S. 38, 96 S.Ct. 2406, 49 L.Ed.2d 300 (1976)), where a suspect has undertaken to flee the jurisdiction, *United States v. Mesa*, 660 F.2d 1070 (5th Cir. Unit B 1981), where the suspect presents a danger to arresting officers or to the public, *United States v. Burgos, supra* (citing *Warden v. Hayden*, 387 U.S. 294, 87 S.Ct. 1642, 18 L.Ed.2d 782 (1967)), or where there is a risk of the destruction or removal of narcotics, *United States v. Burgos, supra.*

[7, 8] It is clear that the government had probable cause to arrest Milian; a machine gun, other firearms and 62 pounds of cocaine had been discovered in the closet of his office. Moreover, several of the exigent circumstances recognized by this Circuit were present at the time of the arrest. During the discussion at Operation Greenback, Milian had mentioned flight as an alternative he would consider if the government did not accept his offer of cooperation. The officers had legitimate reason to suspect that Milian would reconsider his position and flee the jurisdiction if he were not promptly placed under arrest. The discovery of several dangerous firearms at Milian's office also led agents to believe that Milian was holding additional weapons at his home, presenting a danger to arresting officers and to the public. *Cf. Cady v. Dombrowski*, 413 U.S. 433, 93 S.Ct. 2523, 37 L.Ed. 2d 706 (1973) (presence of numerous weapons in suspect's home justified entry without arrest warrant). Finally, and perhaps most importantly, agents knew that Milian was in possession or large quantities of narcotics; he had strong reason to destroy or remove

any drugs outside his office before the investigation progressed further, as their discovery would imperil his chances of striking a deal with the government. Indeed Milian's 11:45 p.m. call to the officers at his business premises evinced his concern with what they may have discovered; it may also have raised suspicions that Milian would use the time during which officials were otherwise occupied to dispose of any additional incriminating evidence. These factors demonstrate that Milian's arrest, though warrantless, was not a violation of his rights under *Payton*. Under these circumstances, Milian's consent to the subsequent search was valid, and the suppression of the items seized was error.

C. Statements at the Custom Office

[9] The government finally challenges the suppression of incriminating statements made by Milian to Customs officials after he was taken from the scene of the arrest to the Customs office. Milian claims that these statements, some of which concerned the cocaine found in his office, were properly suppressed, as they were tainted by the illegal character of his arrest. As we hold that Milian's arrest was within the limits imposed by *Payton*, there is no basis for concluding that his statements at the Customs office were tainted. However, even if there had been misconduct in the initial arrest, it would not have affected the subsequent statements under the circumstances of the instant case. Not only did a full hour elapse between the arrest and the time at which the statements were made, but law enforcement officials had removed Milian from the scene of the arrest, and had administered the *Miranda* warnings on two separate occasions before the interview at the Customs office began. *See Brown v. Illinois*, 422 U.S.

590, 602-04, 95 S.Ct. 2254, 2261-62, 45 L.Ed. 2d 416 (1975) (circumstances to be considered in determining whether statement was "sufficiently an act of free will to purge the primary taint" are temporal proximity of arrest and confession; presence of intervening circumstances; and purpose and flagrancy of official misconduct). Any compulsion Milian felt to speak at the Customs Office arose from the mistaken impression that cooperation might still be in his interests, not from the circumstances of his arrest. The district court erred in suppressing Milian's inculpatory statements.

The suppression orders of the district court are REVERSED and the case is REMANDED for further proceedings consistent with this opinion.

JURISDICTION

The judgment of the Court of Appeals was entered on May 13, 1985.

This Court has jurisdiction under 28 U.S.C.Sec. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fourth Amendment to the United States Constitution as provides in relevant part:

> "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated . . ."

This case also involves the Fifth Amendment to the United States as provides in relevant part:

> "No person shall . . . be compelled in any criminal case to be a witness against himself. . . ."

This case also involves the Sixth Amendment of the United States Constitution as provides in relevant part:

> "In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense . . ."

STATEMENT OF THE CASE

The facts cited in the opinion of the Court of Appeals for some reason, (perhaps because they felt it necessary to reverse in a case where 5.4 Million Dollars in cash and 60 pounds of cocaine were seized) totally ignore certain facts favorable to the Defendant upon which the District Court reached its decision. The Defendant was indicted in a 62 Count indictment charging violations of the Racketeer Influenced and Corrupt Organization (RICO) statute (Title 18 U.S.C. Section 1962(c) and 1963); travel in foreign commerce to distribute the proceeds of an unlawful business enterprise (Title 18 U.S.C Section 1952); failure to file currency transaction reports with the Internal Revenue Service (Title 31 U.S.C. Sections 5313 and 5322(b)); failure to report international transportation of currency for monetary instruments (Title 31 U.S.C. 5316 at 5322 (b)); possession with intent to distribute cocaine (Title 21 U.S.C. Section 841 (a)(1)); and possession of counterfeit U.S. currency (Title 18

U.S.C. Section 472). At the time that the Government indicted the Defendant they obviously did not advise the grand jury that on at least 40 to 60 occasions that Defendant had filed a form 4790 (CMIR) with the United States Customs Service. (Transcript suppression hearing pages 264 to 265). The Court of Appeals ignored this fact in its Statements of Facts. The Defendant's father was in the process going to file a 4790 at Miami International Airport, (the only Airport where a Customs Office was believed to be opened at the time the Defendants flight was taking off) when the Defendant was stopped and $5,447,594.00 was seized from his aircraft at Ft. Lauderdale, Florida (Tr. of Suppression Hearing pages 803 to 807). This fact was also ignored in the Circuit Court's factual presentation.

As the Circuit Court states in its factual recitation the Defendant was not arrested when his money was seized. Instead he engaged in negotiations with the agents of "Operations Greenback" concerning cooperating with the Government. He was told on many occasions that he was free to leave whenever he desired. The Defendant stated that if he received his 5.4 Million Dollars back, he was willing to cooperate significantly with the Government, by revealing high level drug importers and conspirators. The Government expressed great interest, but told the Defendant that he would have to show good faith in order to keep the negotiations open. The Defendant then signed a general consent to search his office. After approximately 14 hours of discussions and search of his office the Government located all of the Defendant's documents which they wished to copy. The agents had brought a high speed microfilm machine to the Defendant's office to make those copies. The search of the office was completed.

The Defendant decided at this point to go home and rest, since he believed he would have to open his office in the morning and to continue in his occupation as an accountant. The Government agents asked the Defendant "if there was any problem if they stayed there to microfilm the documents" (Tr. of Suppression Hearing page 333). The Defendant gave his consent to allow them to remain to microfilm the documents.

At about 12:15 a.m., Agent Neil Heims, who had been sent to the office late in the evening to assist in copying documents, decided to explore the office (Tr. of Suppression Hearing pages 659 to 660). He saw a closet in the Defendant's Office and when he tried to open the door he found that it was locked. Neither Heims nor any of the agents present had a key. Neither Heims nor any of the agents had authority to open the closet door; none of them had ever asked for permission to open the closet (Tr. pages 201-202 and 367). Neither Heims nor any of the agents present had requested permission of the Defendant to open the door either earlier in the day nor when the Defendant had telephoned from home 15 minutes prior to the search (Suppression Hearing Transcript pages 367, 78, 198, 201-202, 367, 489-491). Neither Heims nor any of the agents ever requested a search warrant or attempted to obtain a search warrant (Suppression Hearing Transcript page 600). Nevertheless, Heims decided to see what was in the closet. He testified that he went out to his car got a set of lock picks that he carried and picked the lock on the door (Suppression Hearing Transcript page 663). Subsequent to picking this lock Agent Heims found some hand guns and a submachine gun which were legally possessed by the Defendant (and not charged against him in the indictment) and a duffle bag containing approximately 60 pounds of

cocaine. Approximately 2½ hours after the agents discovered the cocaine in the closet, four federal agents and uniformed police officers converged on the house of the Defendant (which was approximately 15 minutes from his office). With drawn guns aimed at the defendant and his eight month pregnant wife, they placed him under arrest in his home and proceeded to question him. In response to a statement that the cocaine had been found in his office he stated that he had forgotten about it. The Defendant then signed a written consent to search his home. In his home additional legal firearms were found plus $40,000.00 in counterfeit United States Currency. The Defendant was then taken to the United States Customs Headquarters and, approximately one hour after his arrest, advised of his rights. He then made further admissions about the cocaine and executed a consent to search a warehouse.

The District Court conducted a hearing on the Defendant's Motion To Suppress much of the evidence seized from him. The District Court subsequently suppressed the evidence that was seized from the closet in his office and, stating that it was necessary if the Fourth Amendment meant anything, the statements made and the evidence seized from his home. The Court further suppressed the statements made at the Customs Office approximately one hour after the arrest. Relevant sections of those Suppression Orders are quoted in the Court of Appeals decision and a copy of the transcript of the oral Order and the written decision are made part of the Appendix hereto as Appendix one and Appendix two, respectively. On May 13, 1985, the Court of Appeals reversed the District Court entirely and remanded.

REASONS FOR GRANTING THE WRIT

1.

The Court of Appeals improperly expanded the United States Supreme Court's definition of the exigent circumstances which justify a warrantless arrest in a Defendant's home and thus violated the Defendant's rights pursuant to the Fourth Amendment to the United States Constitution.

The Court of Appeals has improperly expanded the limited exigent circumstances exception to the rule of *Payton v. New York*, 445 U.S. 573, 100 S.Ct. 1371(1980). In *Welsh v. Wisconsin*, 104 S.Ct. 2091(1984), this Court states at page 2097 that "it is not surprising, therefore that the Court has recognized, as a basic principal of Fourth Amendment Law, that searches and seizures inside a home without a warrant are presumptively unreasonable". And that "warrantless felony arrests in the home are prohibited by the Fourth Amendment, absent probable cause and exigent circumstances." While the Court noted that there had not been a full consideration of the scope of exigent circumstances, it did say that "exceptions to the warrant requirement are few in number and carefully delineated . . . and that police bear a heavy burden when attempting to demonstrate an urgent need to justify warrantless searches or arrest."

In the instant matter the Court of Appeals unreasonably expands this narrow exception to the warrant rule and lifts that heavy burden from the

shoulders of the police. As it is apparent from the Court of Appeals opinion in this case, the Defendant was in the company of an agents of "Operation Greenback" from approximately 7:30 a.m., until 10:00 p.m., on the day that the Government seized his 5.4 Million Dollars. He subsequently had a conversation with Government agents at about 11:30 p.m. that night. Although early in the day he had mentioned the fact that he might at some point have thought about fleeing the jurisdiction, there was absolutely no reason for the agents to believe, after they have spent the day with, and worked out an outline of cooperation with the Defendant, that the Defendant might flee the jurisdiction. Further, although the agents found cocaine in the closet of the Defendant's office, the record contains absolutely no basis for a finding that the agents had any cause at all, much less probable cause, to believe that there were drugs in the Defendant's house or that he was going to destroy these non-existing drugs. Finally, there is no evidence in the record that the police had any reason to believe that there were guns in the Defendant's house, or that, if there were such guns there, the agents would be in less danger if they arrested the defendant without a warrant than they would be if they arrested him with a warrant. Notwithstanding all of the above the Court of Appeals in its decision found that there were exigent circumstances for a warrantless arrest. They based this upon the undocumented belief upon the fact that the Defendant might destroy drugs, might flee the jurisdiction or might be a threat to the police.

The cases that the Court of Appeals relies upon in reaching its conclusions do stand for the proposition for which they are cited. *United States v. Burgos*, 720

F. 2d 1520, establishes that where an agent saw an individual carrying boxes which the agent *knew* to contain illegal firearms into his home the police officer could, because of the exigent circumstances, go in and seize those firearms. However, here there is no evidence that the agents in the instant case had any basis to believe that the Defendant had firearms in his home, other than the fact that they found *legal* weapons in his office (there is no charge in the indictment that the Defendant possessed any illegal weapons; and in fact, all the weapons which he possessed were legal).

Further, in the *Burgos* case that Court also speaks about the exigent circumstances allowing the prevention of the removal or destruction of narcotics and cites *United States v. Rubin*, 474 F. 2d 262 (3rd Cir. 1973), cert. denied, 414 U.S. 833, 94 S.Ct. 173, 38 L. Ed. 2d 68(1973). But a reading of *Rubin* also shows that there the officers had significant probable cause to believe that there were narcotics in the residence. In the instant case there was no basis for any belief that there were narcotics in the Defendant's residence except for the fact that narcotics were found in his office.

Finally, the Court of Appeals cites *U.S v. Mesa*, 660 F. 2d 1070 (5th Cir. Unit B 1981) for the proposition that exigent circumstances exist where a suspect has undertaken to flee the jurisdiction. That case, however, was a situation involving a raid at an unloading site of a drug boat. Bales of marijuana were being unloaded into a camper and there was a legitimate belief that, in the excitement and confusion, people would flee. There, the exigent circumstances exception to the search warrant requirement allowed the search of a camper. In this

situation there was no such facts in the record. Here the Defendant has spent approximately 15 hours with the agents and had left to go home and go to sleep. The agents had no reasons to believe that he would flee the jurisdiction except for an off-handed remark that was made early on in their time with him. To the contrary, the Court of Appeals finds that the Defendant Milian-Rodriguez was fully cooperating with the Government; and thus, he had actually no reason to want to flee.

What the Court of Appeals has done in this matter is to predicate the exigent circumstance exception not on some probable cause to believe that facts exist to justify those exigent circumstances, and not even upon reasonable suspicion that facts exist that justify those exigent circumstance, but rather on mere supposition. The agents could merely suppose that, because the man had drugs in his office, he would have them in his home. The agents could merely suppose that, since a man has guns in his office, he would have guns in his home. The agents could merely suppose that, because somebody makes an off handed remark about his thoughts about fleeing during the course of a 14 hour conversation, that he is going to flee. Based upon all of this supposition the Court of Appeals finds the agents have the right to drag the Defendant out of his bed at 3:00 in the morning without a warrant, point guns at the defendant and his 8 month pregnant wife, and to coerce his consent to search his premises and to obtain statements from him. This extension of the exigent circumstances exception is totally unwarranted and this Court should grant this petition for certiorari in this case so as to make clear to the Courts of Appeals of this nation that this is not what this Court meant in *Welsh v. Wisconsin*, supra,

when it stated that "the police bear a heavy burden when attempting to demonstrate an urgent need that might justify warrantless searches or arrest."

2.

The Court of Appeals improperly ignored the rulings of the United States Supreme Court when it ruled that there was attenuation of illegality when a second statement was made one hour after an illegally obtained first statement; and thus, it violated the Defendant's rights pursuant to the Fourth, Fifth, and Sixth Amendments to the United States Constitution.

Assuming that this Court finds that the arrest of the Defendant at his home at 3:00 in the morning without a warrant was illegal, then the statements that were made at the time of his arrest and the items pursuant thereto would also necessarily be suppressed. At the time of his arrest the Defendant made certain statements about his knowledge of the cocaine that was found in his office. Approximately one hour later the defendant was taken to the Customs Office and advised of his rights, he then made certain additional statements. The District Court found that "if the Fourth Amendment really means anything at all today. . ." this evidence and these statements must be suppressed. The Court of Appeals found "however, even if there had been misconduct in the initial arrest, it would not have affected the subsequent statements under the circumstances of his arrest. Not only did a full hour elapse between the arrest and the time that the statements were made but law enforcement officials had removed Milian-Rodriguez

from the scene of the arrest and had administered his Miranda warnings on two separate occasions before the interview at the Customs Office began." This decision is in clear conflict with the decisions of this Court regarding attenuation. In *Dunaway v. New York*, 442 U.S. 200, 99 S.Ct. 2248, 60 L. Ed. 2d 824 (1979), this Court discussed the factors which would establish attenuation. Citing *Brown v. Illinois*, 422 U.S. 590, 95 S.Ct. 2254, 45 L. Ed. 2d 416, (1975), the Court stated that in determining whether the confession is obtained by exploitation of an illegal arrest the temporal proximity of the arrest and the confession, the presence of intervening circumstances . . . and particularly the purpose and flagrancy of the official misconduct . . . " must be considered. In that particular case the Court held that "in the less than 2 hours that elapsed between the arrest and the confession there was no intervening event of significance whatsoever'." In that case, after the illegal arrest the Defendant had been given Miranda warnings. The *Dunaway* analysis was more recently affirmed in *Taylor v. Alabama*, 457 U.S. 687, 102 S.Ct. 2664 (1982). In that case the Court stated "In *Brown* and *Dunaway* this Court firmly established that the fact that the confession may be "voluntary" for purposes of the Fifth Amendment, in the sense that the Miranda warnings were given and understood, is not by itself sufficient to purge the taint of the illegal arrest." The Court goes on to say that "The reason for this approach is clear: the exclusionary rule . . . when utilized to effectuate the Fourth Amendment, serves interests and policies that are distinct from those it served under the Fifth Amendment". *Taylor v. Alabama*, supra, was a situation where the confession took place six hours after the illegal arrest. In the instant case the Court of

Appeals finds the confession took place one hour after the illegal arrest. At the time of the illegal arrest the Defendant made the statement that he forgot that the cocaine was in his office closet. That statement, at the time of his illegal arrest, was the predicate for the statements made an hour later. The passage of an hour and the fact that Miranda warnings were given is not sufficient basis for attenuation. There is no evidence of any intervening circumstances. The arrest of a Defendant in his house at 3:00 a.m., with no warrant and no exigent circumstances is clearly flagrant misconduct. As this Court observes in *Taylor v. Alabama*, at page 2667 "The State bears the burden of proving a confession is admissable". The Government offered absolutely no evidence as to attenuation subsequent to the illegal arrest other than those factors cited by the Eleventh Circuit; i.e., the passage of an hour and the Miranda warnings. Thus, there is no basis for the argument of attenuation. The finding of the Eleventh Circuit is contrary to the rulings of this Court in *Brown v. Illinois*, supra; *Dunaway v. New York*, supra; and *Taylor v. Alabama*, supra, and therefore this Court should grant certiorari so that the Eleventh Circuit be required to follow the rulings of this Court.

3.

The Court of Appeals improperly ignored the right of a Defendant to terminate a voluntary consent to search his office without a warrant and thus violated his rights pursuant to the Fourth Amendment of the United States Constitution.

There is no question that a person may waive his Fourth Amendment protection by consenting to a warrantless search, *Shneckloth v. Bustamonte*, 412 U.S. 218 (1973). In this matter there is no disagreement about the fact that the Defendant, Ramon Milian-Rodriguez, consented to a warrantless search of his office as part of negotiations with the Government. The Court of Appeals totally ignored the fact that the search was completed and Defendant withdrew his consent to any further search the office when he left the office at 10:00 p.m. It is conceded by both sides that at 10:00 p.m., the Defendant left the office. The agents were still in his office copying documents on a high speed copier. He was asked by an agent "Is there any problem if they stayed there to microfilm the documents." At that time the Defendants general consent became limited to a consent to remain in his office and microfilm documents. It is clear that one who consents to a search may limit the scope of that search and the Government must keep within its actual bounds *U.S. v. Dhiarinte*, 445 F.2d 126 (7th cir. 1971), *Honig v. U.S.*, 208 F.2d 916 (8th Cir. 916) (8th Cir. 1953), *Mason v. Pulliam*, 557 F.2d 426 (5th Cir. 1977), *U.S. v. Ratkley*, 724 F. 2d 1463 (11th Cir. 1984).

The fact that the Defendant had previously told the agent that the keys to the locked closet were in his brief case which the Government had in its possession is totally irrelevant. The Defendant's general consent was limited to the search that was already conducted and concluded when he left the office. He gave limited consent to the agents to remain in the office and copy the records that were already seized. What then occurred was that a new shift of agents came into the office at

approximately mid-night to assist in the copying. One of the agents saw the locked closet, was curious, went outside, got his lock pick from the car and picked the lock. That search was totally beyond the consent of this Defendant and therefore should be suppressed as a violation of the Defendant's Fourth Amendment right to avoid a warrantless search. The fact that approximately 60 pounds of cocaine were found in his closet does not make the search any more legal.

Thus the Eleventh Circuit totally ignored the fact that the Defendant has a right to withdraw a consent or at some point during the search limit the general consent to a more specific one. The Defendant did this in responding to the agent's questions as to whether they could stay and copy those items which they had already seized. The District Court found the factual situation to be as the Defendant suggests here. The District Court stated in its oral ruling on the Motion To Suppress at page 9 and 10 "the files were copied over a long period of time—and I think perhaps it took all night—that there was consent given . . . to allow that . . . [but] . . . that the Government went beyond that [the scope of the consentual search] when it picked the lock on the door sometime that evening.". At that same page in its ruling on the Motion to Suppress the District Court went on to say that "the Government sat there with all that power, sat in that room with the Defendant for hours and when he [the Defendant] walked out, went in with their little screwdriver or whatever they did to get into that locked room." The District Court found that the search occurred after the consent for the general search had been limited to a consent to complete the copying. Thus the Eleventh Circuit is, in

this decision, at odds with its own previous decision in *U.S. v. Rackley*, supra, and with the decisions of the other Circuit Courts previously cited which unanimously agree that the extent of a consent search can be limited.

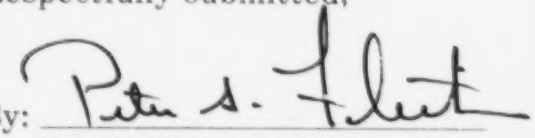
CONCLUSION

For the reasons stated above it is clear that the Eleventh Circuit in the decision of this case, perhaps because of a large amount of money and drugs involved, chose to ignore the precedents set down by the United States Supreme Court. Instead, the Court of Appeals improperly extended the doctrine of exigent circumstances for a warrantless search of a Defendant's home, improperly expanded the case law on attentuation, and totally ignored the fact that a consent search can be limited by a Defendant. Therefore this Court should grant the Petition for Certiorari so as to allow these matters to be argued before this Court.

Particularly, the Court of Appeals to the Eleventh Circuit, which is confronted with a heavy burden of major drug and money laundering cases, is unfortunately subject to the pressures of the communities which it serves. It is only this Court that can avoid such pressures. It is unfortunate that because major amounts of money or drugs are involved in a case, that a Court of Appeals finds it necessary to totally ignore the existing case

law. It is only by this Court granting a Petition for Certiorari that we can maintain a proper system of justice.

Respectfully submitted,

By: 

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CERTIFICATE OF SERVICE

I hereby certify that the appropriate number of copies of this petition have been served upon the Solicitor General, Department of Justice, Washington, D.C. 20530 by depositing said copies with the U.S. Postal Service.

By: _____
FRED A. SCHWARTZ, ESQ.

Appendix

Appendix 1

[Filed FEB 2 1984]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Docket No. 83-419-Cr-EBD

UNITED STATES OF AMERICA,
Plaintiff,

vs.

RAMON MILAN-RODRIGUEZ,
Defendant.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE EDWARD B. DAVIS

TRANSCRIPT ORDERED BY:
STEVEN SCHLESSINGER
Assistant United States Attorney
155 South Miami Avenue
Miami, Florida 33130

APPEARANCES:

For the Government:
STEVEN SCHLESSINGER
Assistant United States Attorney
155 South Miami Avenue
Miami, Florida 33130

For the Defendant:
HARVEY ROBBINS, ESQ.
1100 Northeast 125th Street
North Miami, Florida 33168

Court Reporter:
Larry Herr
301 North Miami Avenue
Miami, Florida 33128

(Call to order of the court.)

THE CLERK: Case No. 83-419-Cr-EBD, United States of America vs. Ramon Milan-Rodriguez.

Counsel state their appearance for the record.

MR. SCHLESSINGER: Steven Schlessinger, Assistant United States Attorney, for the United States.

MR. ROBBINS: Good afternoon, your Honor.

Harvey Robbins on behalf of the defendant, Ramon Milan-Rodriguez.

THE COURT: I have reviewed both of the briefs that have been submitted by both sides.

I was under the impression that we had a twenty-page rule in this court. I have searched around and found that to be correct.

I tried to find the twenty best pages for each side so that I would follow the rule, even if the lawyers

didn't. But I found that too difficult to do, so I did read both of the briefs.

Mr. Robbins, do you have anything you would like to add to what you have already presented to me?

MR. ROBBINS: Your Honor, most respectfully, I apologize for breaking that rule. I was really not aware of it, and I do apologize for not knowing about it.

But my response any further would be in reference to the Government brief, and you have read it, your honor.

THE COURT: I have read it.

MR. ROBBINS: So I would say it would not be necessary.

THE COURT: Mr. Schlessinger, how about you?

MR. SCHLESSINGER: I, too, apologize, your Honor. I could only plead ignorance of the rule.

I have, I believe, responded to all the arguments that have been advanced and I have nothing in addition to add.

But I would appreciate the opportunity to respond to any questions that the Court might have.

THE COURT: Okay.

I have reviewed them. I thought both briefs were pretty thorough and covered the subjects that I hoped you would address.

We have done a little independent research in addition to some of the matters that you brought out, and I think the Supreme Court within the last three weeks or so has decided a search and seizure case, although not on the specific point, has some of the language that they have been talking about for a long period of time.

As I indicated to you before, I felt that if you briefed this for me that I could rule on it from the Bench.

And I believe that that certainly is possible in this set of circumstances.

I am not sure that there isn't one item that troubles me because I am not sure what happened to it—and I will address this to the Government first—and that was the briefcase of the defendant.

It's sort of been a mystery to me, exactly what happened to it, what was contained in there throughout the period of time.

I know what comments were made that I heard in here and are in the transcript.

What did happen to that briefcase?

MR. SCHLESSINGER: Your Honor, I believe that the testimony established or should have established that the briefcase was taken from the plane moments after its boarding.

It was kept in Agent Sumrall's custody throughout the day.

THE COURT: Was it always at the office after it came from the airport?

MR. SCHELSSINGER: Yes, your Honor, it was always at the office, until such time it was brought to the custodian of evidence.

Contained within the briefcase, your Honor, were, among other things, the Brinks book—that is to say, the book containing the receipts for the various transportations of money that were undertaken by defendant in this case, which entries were countersigned, as I understand it, by the Brinks guard in Panama taking delivery.

Those entries, of course, indicate, among other things, the amount of money that was entrusted.

The briefcase also contained monthly ledgers for the months June 1982 through, I believe, April 1983, with the exception of the monthly ledger for December 1982 which has never been found.

Those monthly ledgers indicate, among other things, Mr. Milan-Rodriguez' receipt on various dates of various sums of money in a coded manner.

t also indicates the source of those funds.

There is also a means by which I believe Mr. Milan-Rodriguez was able to determine his fee for those receipts and deliveries of cash based on those monthly ledgers.

In addition, there were also some other items taken from the briefcase.

There were also, your Honor, individual receipts or copies of individual receipts apparently made in connection with each individual receipt by Mr. Milan-Rodriguez of those cash funds.

There were also some other documentation pertinent to his operation which should not have been the subject of any testimony here today or during the hearing.

THE COURT: Mr. Robbins, is that your recollection?

MR. ROBBINS: Sir, other than the Brinks book, I would point out to the Court, it contained the keys to his car, to his office, to his home, his passport and other personal belongings to Mr. Milan, as well as the keys to the closet in the office.

THE COURT: I remember what was said about that during the suppression hearing where the defendant indicated that the keys to the closet were in the briefcase during the hearing or there was testimony to that effect anyway by an agent.

I will go ahead and rule on the motion to suppress, and I will go to the back part first.

It seems to me the easiest question that was presented was the conduct of the Government at the defendant's house when the search was made early in the morning.

I find that there really was no excuse for not getting a warrant to search the house under the circumstances, get into the house and search it.

I realize there was a consent given by the defendant after he was awakened at 3:00 o'clock in the morning under what I would consider extreme conditions where people—law enforcement officers were at both sides of the house with weapons drawn.

I find that, if the Fourth Amendment really means anything at all today, that sort of activity should be prohibited.

Therefore, I would suppress everything that was found in the house.

I find the search warrantless and non-consensual and would suppress everything that was taken from the house.

I believe there were guns, counterfeit money and statements that were made at that time.

I go back to the original stop boarding search of the Lear Jet.

Although I did not find an Eleventh Circuit case that would have treated this as a border search, I believe the cases presented to me that show the Eighth, Ninth and Second Circuits to treat outbound searches the same as inbound border searches to be correct and the reasoning appropriate.

I would find, first of all, that the original stopping and the search of the jet, considering all the circumstances that were presented to me, were appropriate as a border search.

And, secondly, that based on the information that was presented in this courtroom that the agents had probable cause to stop the plane and make the initial search that found the money behind the seat.

I think it is clear that the right to stop that plane could not be shown until it was known that there was money or there was a good, well-founded belief there were funds on that plane; that the agents in good faith believed that no form had been filed because it was not filed at Fort Lauderdale's Customs; that if the stop was not made, the plane would be up in the air and gone before anything could have been done about it.

Under that situation, I really can't think of a more appropriate set of circumstances for stopping and boarding the plane.

I found also that on the facts that were presented to me the detention of what appeared to me based on the testimony to be about an hour and a half to two hours before it was clear that the people on the plane with the possible exception of the defendant were free

to leave was not an unreasonable detention under the circumstances.

I also found that the defendant voluntarily made statements without being questioned by the Government agents that were there that started the ball rolling on the statements.

After they indicated they were going to be inculpatory, the Assistant U.S. Attorney, Mr. Saphos, came down, Miranda warnings were given, and the defendant continued to talk.

And I found the warnings to be more than adequate under those circumstances.

I find that the defendant voluntarily allowed the brief search in the room above the airport and agreed as part of his negotiations with the agents to allow a search at least of the files and records in his office. That was voluntarily done and consented to by the defendant.

Therefore, I would find that the files that were copied over the long period of time—I think perhaps that took all night—that there was a consent given by the defendant to allow that.

The defendant was cooperating with the Government at that time.

The defendant received warnings throughout this rather long day. I think it seemed clear to me that he agreed to and consented voluntarily to the searches that gave up his records in the office.

However, it did seem to me that the government went beynd that when it picked the lock on the closet door some time later in the evening, that that was beyond the scope of the consensual search.

And I think the record reflects clearly that the search that was consented to, the defendant was talking about files and records and not the right to go and pick the lock on his closet.

Certainly the Government could have gotten a search warrant, had lawyers available, tired though they may have been, during that day.

I would go ahead, based on that, I would suppress whatever evidence was in the closet.

In summary, the evidence that I would suppress would be statements and whatever was found at the house at the final search, the items that were in the closet that the Government found by picking the lock.

And I would not suppress the remainder of the information that was gathered by the Government from the defendant from his office that occurred prior to that time.

I would think that we would be ready for trial, would we not, Mr. Robbins?

I know the Government indicated to me that they are always ready.

MR. SCHLESSINGER: That's correct, your Honor.

MR. ROBBINS: Your Honor, at this time, Judge Kane of Hammond, Indiana, advised at least the best notice for February 9th for trial in Hammond, Indiana. I would imagine two to three weeks for that.

After that, your Honor, I have nothing scheduled.

THE COURT: You have two to three weeks starting— —

MR. ROBBINS: He said February 9th through February 15th we should be ready.

Of course, if anything is changed, I would advise the Court.

THE COURT: We are looking a couple of weeks down the line from February 9th.

MR. ROBBINS: From February 9th two to three weeks, Judge.

Although the Government said eight weeks, they now have programmed it down to two weeks. The Judge, therefore, advised two to three weeks.

THE COURT: What would you guess it would take you to put on this case?

MR. SCHLESSINGER: In its present posture, it would take us about four days to put this case on.

Your Honor, may I inquire as to some facet of the Court's ruling?

THE COURT: Sure.

MR. SCHLESSINGER: Your Honor, you indicated you were going to suppress statements made at the scene of Mr. Milan-Rodriguez' arrest the early morning hours of May 5th.

There were some statements that were subsequently made at the Customs headquarters.

Do I presume correctly you are not suppressing those statements?

THE COURT: I am not sure what those statements are, frankly.

MR. SCHLESSINGER: Your Honor, the testimony was at the scene of his arrest, Mr. Milan-Rodriguez made some remarks concerning the cocaine.

THE COURT: I remember that remark. I remember that's really the last remark that I had remembered him making that was a significant remark that came out in that hearing.

MR. SCHLESSINGER: Your Honor, the testimony was following his arrest, he was taken to Customs headquarters whereafter he was once again fully and completely advised of his rights.

He made some further inculpatory statements regarding both the cocaine and certain other people in the narcotics business.

THE COURT: I will have to take a look at that and I will issue a separate ruling on that.

I did not consider anything beyond the house arrest.

I remember the statement about that he had forgotten the sixty-two pounds, whatever it was, kilos perhaps, of cocaine was in the closet. I do remember that.

And that statement I would suppress.

I will look at that, Mr. Schlessinger and Mr. Robbins, and make a specific ruling on that.

Was there anything else that I left out in that ruling that I did not cover?

MR. ROBBINS: I believe that was complete, your Honor.

COURT: Okay.

I will try to do that very quickly.

That is all in the last of the transcript, is it?

MR. SCHLESSINGER: It is, your Honor.

THE COURT: Okay.

Do you need any time to bring in witnesses?

MR. SCHLESSINGER: Your Honor, I think I ought to say in all candor that given the significance of this Court's ruling and the importance of this case, it will be my duty to recommend to my boss, and I believe it will be his opinion, that we should seek an appeal in this matter.

THE COURT: I understand that.

MR. SCHLESSINGER: So any trial date, assuming that we obtain permission from the Attorney General to pursue this matter in the Court of Appeals, I presume a trial date would be academic.

THE COURT: Oh, it would be, indeed.

If you appeal me, I know that it takes some period of time for the Eleventh Circuit to act.

I am sure you will make that decision prior to three weeks or so.

MR ROBBINS: I would be done in Hammond, Indiana, the first week in March at the latest.

THE COURT: I'm sure your response will come quicker than that, Mr. Schlessinger.

MR. SCHLESSINGER: Your Honor, I believe I will know perhaps by the end of the week.

THE COURT: That would be helpful to everybody, because if you know you are going to appeal me, then

we could advise Mr. Robbins. He would not have to be ready, and we could re-schedule other matters.

Okay. That would be fine.

Court is in recess.

(Proceedings concluded at 2:10 p.m.)

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

DATED: Feb. 2, 1984

[Illegible]

Official Court Reporter

Appendix 2

[FILED FEB 2 1984]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 83-419-Cr-EBD

UNITED STATES OF AMERICA,
Plaintiff,

vs.

RAMON MILIAN-RODRIGUEZ,
Defendant.

THIS MATTER has come before the Court on the motion of the Defendant to suppress. A hearing was held on this matter and the Court ruled on the motion from the bench on February 1, 1984. At that time the Court reserved ruling on statements made by the Defendant at the Customs House subsequent to his arrest on May 5, 1983. After careful consideration of the briefs submitted and the transcript of the suppression hearing, it is

ORDERED AND ADJUDGED that the statements made in the Customs House are suppressed. The Court finds that these statements are fruits of the poisonous tree, in that the content of those statements involve matters which were the result of an illegal search under the Fourth Amendment of the Constitution of the United States.

DONE AND ORDERED this 1st day of February, 1984 in Chambers at Miami, Florida.

/s/ EDWARD B. DAVIS

EDWARD B. DAVIS
UNITED STATES
DISTRICT JUDGE

cc: Steve Schlessinger
Harvey Robbins

Office-Supreme Court, U.S.
FILED
JUL 29 1985
ALEXANDER L. STEVAS,
CLERK

No. 85-87 (2)

In the Supreme Court of the United States

OCTOBER TERM, 1985

RAMON MILIAN-RODRIGUEZ, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

CHARLES FRIED
Acting Solicitor General
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In the Supreme Court of the United States

OCTOBER TERM, 1985

No. 85-87

RAMON MILIAN-RODRIGUEZ, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that the court of appeals erred in reversing an order suppressing evidence and oral admissions.

On October 18, 1983, petitioner was charged in a superseding indictment returned in the United States District Court for the Southern District of Florida with possession of cocaine with intent to distribute, in violation of 21 U.S.C. 841(a)(1); possession of counterfeit currency, in violation of 18 U.S.C. 472; racketeering, in violation of 18 U.S.C. 1962(c) and 1963; foreign travel in aid of racketeering, in violation of 18 U.S.C. 1952; and failure to file currency transaction and transportation reports, in violation of 31 U.S.C. 5313, 5316 and 5322(b). Before trial, petitioner moved to suppress evidence seized pursuant to warrantless searches of his place of business and his residence. On February 1, 1984, the district court granted the motion

in part, suppressing firearms, cocaine, negotiable instruments and United States currency seized from petitioner's place of business on the ground that the search exceeded the scope of petitioner's consent. Pet. App. 10. The district court also suppressed evidence seized from the house (additional firearms and almost $40,000 in counterfeit United States currency) on the ground that the warrantless arrest was illegal under *Payton* v. *New York*, 445 U.S. 573 (1980). Pet. App. 7. On February 2, 1984, the district court entered an order excluding statements made after the arrest as "fruits of the poisonous tree." Pet. App. 16. The court of appeals reversed, concluding that petitioner's consent extended to the search of his place of business and that exigent circumstances justified the government's failure to obtain a warrant before entering petitioner's house. Pet. 2-17.

Petitioner contends (Pet. 22-31) that the court of appeals ignored the limits of his consent, improperly extended the definition of exigent circumstances, and erred in concluding that the statements petitioner made were not the direct result of an illegal warrantless arrest. Whatever the merits of petitioner's contentions, they are not presently ripe for review by this Court. The court of appeals' decision places petitioner in precisely the same position he would have occupied if the district court had denied his motion to suppress. If petitioner is acquitted following a trial on the merits, his contentions will be moot. If, on the other hand, petitioner is convicted and his conviction is affirmed on appeal, he will then be able to present his contentions to this Court, together with any other claims he may have, in a petition for a writ of certiorari seeking review of a final judgment against him. Accordingly, review by this Court would be premature at this time.[1] See, *e.g.*, *Brotherhood of*

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[1]We note in addition that more than 21 months have already passed since the return of the superseding indictment and more than 17 months have passed since the district court's suppression orders. Petitioner's trial should not be further delayed.

Locomotive Firemen & Enginemen v. *Bangor & Aroostook R.R.*, 389 U.S. 327 (1967); *Hamilton Shoe Co.* v. *Wolf Brothers*, 240 U.S. 251, 257-258 (1916); *American Construction Co.* v. *Jacksonville, Tampa & Key West Ry.*, 148 U.S. 372, 384-388 (1893).[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Acting Solicitor General

JULY 1985

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[2]Because this case is interlocutory, we are not responding on the merits to the questions presented by the petition. We will file a response on the merits if the Court requests.

DOJ-1985-07